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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,225	12/07/2005	Abdelhamid Sayari	OSLER1120	2908
28213	7590	08/11/2008		
DLA PIPER US LLP 4365 EXECUTIVE DRIVE SUITE 1100 SAN DIEGO, CA 92121-2133			EXAMINER CORNO JR, JAMES A	
			ART UNIT 4162	PAPER NUMBER
			MAIL DATE 08/11/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/539,225

Applicant(s)

SAYARI, ABDELHAMID

Examiner

JAMES CORNO

Art Unit

4162

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-25 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 21 is objected to because of the following informalities: "according to claim 21" should read "according to claim 20" instead. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the pore channels" in the last line of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation "the pore channels" in the fourth line of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a

manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited. For the purposes of examination, everything after step (b) has been ignored.

Double Patenting

Applicant is advised that should claim 23 be found allowable, claim 24 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Stein et al. (*Advanced Materials* **12(19)** p. 1403-1419, 2000). Stein teaches the modification of mesoporous silica by binding amino groups to pore wall surfaces.

Regarding claim 2, Stein teaches that the organic units are covalently bonded to the silica (p. 1404, first full paragraph).

Regarding claims 3 and 13, Stein teaches the use of (3-aminopropyl) triethoxysilane (sec. 4.3, first paragraph).

Regarding claim 4, Stein teaches that the pore walls are silanol-terminated and are therefore hydrophobic (Fig. 1).

Regarding claims 5 and 15, Stein teaches the use of alkylamines (sec. 2.1.2, first paragraph).

Regarding claim 7, Stein teaches the amine functionalization of the pore network.

Regarding claims 14, 16, 18, and 19, Stein teaches the use of amphiphilic surfactants (sec. 3, second paragraph).

Regarding claims 17 and 18, Stein teaches the use of a swelling agent (trimethylbenzene, sec. 4.2.3, last paragraph).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stein as applied to claims 5 above, and further in view of Birbara et al. (US Patent No. 5,876,488). Stein does not the use of the claimed amine compounds. Birbara teaches

that secondary amines containing multiple hydroxyl groups, including diethanolamine (col. 3, line 26), are especially useful for coating porous structures to be used in dry scrubbing operations. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Birbara's chosen compounds in order to improve performance of the sorbent.

Claims 8-11 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein as applied to claim 1 above, and further in view of Birbara. Stein teaches that the coated silica may be used as a sorbent does not specifically teach the use of the described sorbent for CO₂ scrubbing. Birbara teaches that the amine-modified surface is useful for removing CO₂ and describes a process for doing so. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the material of Stein as a scrubber as described by Birbara as Birbara clearly teaches that the material is useful for this process.

Birbara teaches that amine-terminated porous structures may be used in a dual bed system including pumps and valves (Fig. 1). Regarding claims 22-24, Birbara teaches that the sorbent may be in pellet form (col. 3, line 55).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES CORNO whose telephone number is (571)270-5829. The examiner can normally be reached on Monday-Thursday 9:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES CORNO/
Examiner, Art Unit 4162

/Jennifer McNeil/
Supervisory Patent Examiner, Art Unit 4162